IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Writ Petition No. 259 (SS) of 2005

Yadhuvir Singh
Son of Sri Reja Singh,
Resident of Simla P.O – Diwarikhal,
District – Pauri Garhwal,
At present residing at Kashirampur,
Talla Kotdwara,
District – Pauri Garhwal. **…….Petitioner.**

Versus

1. Union of India through Defence Secretary, New Delhi.
2. Rocords Officer Rajputana Rifles, New Delhi.
3. Principal Controller of Defence Accounts (Pension) G–3, Section, Allahabad.

…….Respondents

Hon'ble M.M. Ghildiyal, J

Heard Sri N. S. Negi, learned counsel for the petitioner and Smt. Anjali learned Standing Counsel for Union of India on behalf of respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:

a. Issue a writ, order or direction in the nature of Mandamus directing the respondents to pay disability pension to the petitioner with effect from 28.02.1997. i.e. from the date when the petitioner was discharged from 21 Rajputana Rifle.

b. Issue a writ, order or direction in the nature of Mandamus directing the respondents to pay disability pension with interest.

c. *Issue any suitable writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstance of the case.*

d. *Award the cost of the writ petition.*

The submission of the petitioner is that petitioner was enrolled in Indian Army on 28.02.1980 and after completing 17 years of service in the Army, petitioner was retired from the post of Naik. Petitioner is already getting service pension. Petitioner was suffering from disease gounty arthritis and cortical cyopt (Lt) while in service and he was placed in the category of BEE (Permanent).

Respondents have filed counter affidavit. In paragraph 8 of the counter affidavit respondents have submitted that petitioner is spite of being aware of the fact that he being in low medical category BEE (P) was not eligible for re-enrollment as per Rules in vogue but got himself re-enrolled in Defence Security Corps on the basis of wrong medical category mentioned in his discharge book inadvertently at the time of discharge. The petitioner is not entitled for disability pension in terms of para no. 173 of Pension Regulation 1961 according to which unless otherwise specifically provided a disability pension may be granted to an individual who is invalided from service on account of disability which is attributable to or aggravated by military service and is assessed at 20% or more. However, in the instant case the disability of the petitioner is less than 20% even on review, which dissented him for disability pension.

In view of the above, petitioner is not entitled to get disability pension as such, no relief is granted to the petitioner under Article 226 of the Constitution of India.

Writ petition devoid of merit and as such, is dismissed. Stay application no. nil of 2005 is rejected accordingly. No order as to costs.

(M.M. Ghildiyal, J)

December 7, 2006
SKSharma